NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-1039

CALEB MEADOUGH and FLOTILLA MEADOUGH, APPELLANTS V. MARQUAN L. BULLINER, APPELLEE	**Opinion Delivered** APRIL 8, 2009 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. PGD-08-530] HONORABLE ELLEN B. BRANTLEY, JUDGE, AFFIRMED

KAREN R. BAKER, Judge

Appellants Caleb and Flotilla Meadough challenge the trial court's dismissal of their petition for guardianship of their deceased daughter's two minor children in favor of the children's father, appellee Marquan Bulliner. For the reasons stated herein, we find no error and affirm.

Appellants' daughter, Angela Bulliner, was married to appellee, and two daughters were born to the marriage. The parties separated in February 2005, and Angela and the two girls moved into the home of appellants. Appellants cared for the children and Angela continuously until October 2007, at which time Angela and the girls moved into an apartment. Appellants continued to maintain daily contact and to provide financial support for Angela and the children until Angela died suddenly from a heart attack on March 26, 2008.

At the time of Angela's death, appellee was in arrears in child support in excess of $15,000. Relying on these arrears and charges of domestic violence filed against appellee during the course of separation, appellants sought a guardianship of the two minor children. From the bench, the trial court commended appellants' care for the children; however, the trial court found appellee to be fit for custody. Accordingly, the court dismissed the petition for guardianship.

In child custody appeals we review the evidence de novo, but we will not reverse the findings of the court unless it is shown that they are clearly contrary to the preponderance of the evidence. *Dunham v. Doyle*, 84 Ark. App. 36, 40, 129 S.W.3d 304, 306 (2003). We also give special deference to the superior position of the trial court to evaluate and judge the credibility of the witnesses in child-custody cases. *Id*. We know of no cases in which the superior position, ability, and opportunity of the trial court to observe the parties carry as great a weight as those involving children. *Id*. A finding is clearly against the preponderance of the evidence when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id*.

As a general rule, there must be a finding of unfitness of the natural parents in order to give custody to a third party. *Robbins v. State*, 80 Ark. App. 204, 208-09, 92 S.W.3d 707, 710 - 11 (2002). *See also Schuh v. Roberson*, 302 Ark. 305, 788 S.W.2d 740 (1990); *Greening v. Newman*, 6 Ark. App. 261, 640 S.W.2d 463 (1982). Our law establishes a preference for the natural parent in third-party custody cases and that preference must prevail unless it is established that the natural parent is unfit. *See Robbins*, *supra*; *Stamps v. Rawlins*, 297 Ark. 370,

761 S.W.2d 933 (1988); *Perkins v. Perkins,* 266 Ark. 957, 589 S.W.2d 588 (1979); *Greening*, *supra.* This preference applies in guardianship cases as well. *See Blunt v. Cartwright,* 342 Ark. 662, 30 S.W.3d 737 (2000) (holding that a preference in Ark. Code Ann. § 28-65-204 (Supp. 2001) is given to the natural parent if that parent is determined to be suitable and qualified by the probate court). Therefore, when a third person seeks to deprive a parent of custody, the third party cannot do so without first proving that the parent is not a suitable person to have the child. *Id.* (citing *Riley v. Vest*, 235 Ark. 192, 357 S.W.2d 497 (1962)).

In *Schuh*, our supreme court explained the reason for this preference:

> The law recognizes the preferential rights of parents to their children over relatives and strangers, and where not detrimental to the welfare of the children, they are paramount, and will be respected, unless special circumstances demand that such rights be ignored.... Courts are very reluctant to take from the natural parents the custody of their child, and will not do so unless the parents have manifested such indifference to its welfare as indicates a lack of intention to discharge the duties imposed by the laws of nature and of the state to their offspring suitable to their station in life.

Schuh, 302 Ark. at 307, 788 S.W.2d at 741 (quoting *Parks v. Crowley*, 221 Ark. 340, 253 S.W.2d 561 (1952) (citations omitted)).

The law prefers a parent over a grandparent or other third person, unless the parent is proved to be incompetent. *Dunham*, *supra.* That preference is based upon the best interest of the child which is the prime concern and the controlling factor. The trial court in this case specifically found that the natural father was fit. Testimony regarding the alleged abuse was disputed and resolution of credibility on that issue was entirely within the trial court's province. *Dunham*, *supra.* In explaining the child support arrearage, appellee testified that at the time of the parties' separation, financial concerns were the primary source of their

disagreements. He described the foreclosure of their home, the denial of his workers' compensation claim, and an inability to work for a period of time as contributing to the tension and his financial distress. He said that he began working on October 7, 2007, and began giving Angela money to buy the children food and shoes. His testimony regarding his financial support on resuming work corresponds with Angela obtaining the apartment and moving out of her parents' home.

Under these circumstances, we cannot say that we are left with a firm and definite conviction that the trial court erred in finding the father fit to have custody, nor that it was in the children's best interest to dismiss the guardianship petition. Accordingly, we affirm.

Affirmed.

ROBBINS and KINARD, JJ., agree.